

CITY COUNCIL AGENDA ITEM COVER MEMO

FOR AGENDA OF COUNCIL MEETING/WORK SESSION - DATE : October 11, 2012

ACTION REQUESTED BY: Huntsville Utilities

SUBJECT MATTER : TVA Agreement

EXACT WORDING FOR AGENDA: Resolution authorizing the Mayor to execute a proposed Project Agreement allowing for TVA's Design and Construction on the 3.9 miles of Double-Circuit 161-kV Transmission Line from TVA's Madison 500/161-kV Substation to Huntsville Utilities planned Charity Lane 161-kV Substation to accommodate the planned Double-Circuit Under-Built Circuits. (Utilities: Electric)

ORDINANCE:

RESOLUTION: X

MOTION:

(IF AMENDMENT, STATE TITLE AND NUMBER OF ORIGINAL): N/A

ITEM IS TO BE CONSIDERED FOR:

INTRODUCTION:

ACTION: X

DISCUSSION:

UNANIMOUS CONSENT REQUIRED? No

BRIEFLY STATE WHY THE ACTION IS REQUESTED; WHY IT IS RECOMMENDED OR NOT RECOMMENDED; WHAT COUNCIL ACTION WILL PROVIDE, ALLOW, OR ACCOMPLISH; ANY ASSOCIATED COST; BUDGETED (?); AND ANY OTHER INFORMATION THAT YOU THINK MIGHT BE HELPFUL. Approval of this resolution will authorize the Mayor to execute a proposed Project Agreement allowing for TVA's Design and Construction on the 3.9 miles of Double-Circuit 161-kV Transmission Line from TVA's Madison 500/161-kV Substation to Huntsville Utilities planned Charity Lane 161-kV Substation to accommodate the planned Double-Circuit Under-Built Circuits.

MAYOR RECOMMENDS OR CONCURS? YES _____ NO _____ N/A _____

SIGNATURE: William C. Pippin, President & CEO

DATE: September 21, 2012

RESOLUTION NO. 12-_____

WHEREAS, the City of Huntsville, Alabama (hereinafter referred to as Distributor), and Tennessee Valley Authority (hereinafter referred to as TVA), did heretofore enter into a contract dated May 26, 1980 (which contract, as amended and supplemented, is hereinafter called the Power Contract); and

WHEREAS, TVA is constructing the Madison-Charity Lane 161-kV transmission line extending from TVA's Madison 500/161-kV Substation to Distributor's planned Charity Lane 161-kV Substation; and

WHEREAS, Distributor has requested additional TVA facilities on approximately 3.9 miles of the transmission line to accommodate two underbuilt 46-kV distribution circuits; and

WHEREAS, Distributor and TVA entered into a Preliminary Work Agreement, numbered 6204 and dated August 17, 2011, that provides terms and conditions for TVA to perform the preliminary work activities to design and construct the Underbuilt Circuits; and

WHEREAS, there is now presented to the City Council of the City of Huntsville, Alabama, an agreement confirming the overall work scope for modification and construction of TVA's planned transmission line to accommodate the underbuild project, with the representation that the said agreement has been approved by the Huntsville Electric Utility Board.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that it does approve the aforesaid Agreement and Tommy Battle, as Mayor of the City of Huntsville, Alabama, be, and he is authorized to execute said agreement for and on behalf of the City of Huntsville, Alabama, and the Clerk-Treasurer be and he is hereby authorized to attest the same and to affix thereto the seal of the City of Huntsville, Alabama, all in as may counterparts as may be necessary.

BE IT FURTHER RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement by and between the City of Huntsville and the Tennessee Valley Authority on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Project Agreement between City of Huntsville, Alabama, and Tennessee Valley Authority," consisting of 9 pages and the date of _____, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the _____ day of _____, 2012.

President of the City Council of
The City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2012.

Mayor of the City of Huntsville,
Alabama



Tennessee Valley Authority, Post Office Box 1010, CSC 1A, Muscle Shoals, Alabama 35662-1010

9/12
Electric BD
Council
WCS

September 14, 2012

Mr. William C. Pippin
President and Chief Executive Officer
Huntsville Utilities
Post Office Box 2048
Huntsville, Alabama 35804-2048

Dear Bill:

Enclosed for your review and execution are triplicate originals of a proposed Project Agreement covering arrangements for TVA to perform work activities. The work is associated with TVA's design and construction of additional facilities on the 3.9 miles of the double-circuit 161-kV transmission line from TVA's Madison 500/161-kV Substation to Huntsville Utilities' planned Charity Lane 161-kV substation to accommodate your planned double-circuit under-built circuits.

Upon execution of the Project Agreement by Huntsville Utilities, all three of the originals of the agreement should be returned to me for further handling. Upon execution by TVA, two fully executed originals of the Project Agreement will be returned to you. Please note that the agreement will be dated by TVA upon its execution.

If you have any questions concerning this agreement, please contact me at (256) 386-2614.

Sincerely,

Kevin C. Chandler
Senior Customer Service Manager

Enclosures

**PROJECT AGREEMENT
BETWEEN
CITY OF HUNTSVILLE, ALABAMA
AND
TENNESSEE VALLEY AUTHORITY**

Date: _____

Contract No. 6500

THIS AGREEMENT, made and entered into between CITY OF HUNTSVILLE, ALABAMA (Distributor), a municipal corporation created and existing under and by virtue of the laws of the State of Alabama, and TENNESSEE VALLEY AUTHORITY (TVA), a corporation created and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended (TVA Act);

WITNESSETH:

WHEREAS, TVA is constructing the Madison - Charity Lane 161-kV Transmission Line (Transmission Line) extending from TVA's Madison 500/161-kV Substation to Distributor's planned Charity Lane 161-kV Substation (New Substation); and

WHEREAS, Distributor has requested additional TVA facilities on approximately 3.9 miles of the Transmission Line necessary for TVA to construct two underbuilt 46-kV circuits for Distributor's use (Underbuilt Circuits); and

WHEREAS, Distributor and TVA have entered into a Preliminary Work Agreement, numbered 6204 and dated August 17, 2012 (Preliminary Work Agreement) that provides terms and conditions under which TVA has agreed to perform certain preliminary work activities to design and construct the Underbuilt Circuits; and

WHEREAS, the parties wish to agree upon the terms and conditions under which TVA will construct the Transmission Line and Underbuilt Circuits;

NOW, THEREFORE, for and in consideration of the premises and of the agreements set forth below, and subject to the TVA Act, the parties agree as follows:

SECTION 1 - TERM OF AGREEMENT

This agreement shall be effective as of _____ (Effective Date), and shall continue in effect until all obligations of the parties under this agreement have been fulfilled.

SECTION 2 - CONSTRUCTION BY TVA

TVA shall, in accordance with good, modern practices and procedures, construct the Transmission Line with additional facilities necessary to accommodate and construct the Underbuilt Circuits (TVA Work). After the TVA Work is complete, Distributor shall own and maintain the Underbuilt Circuits in accordance with the Joint Use of Poles

Agreement between TVA and Distributor, numbered TV-83830, dated May 18, 1944, as amended. Distributor shall provide the materials necessary for TVA to construct the Underbuilt Circuits. TVA shall notify Distributor of the materials necessary to complete the Underbuilt Circuits by no later than April 10, 2013. Distributor shall deliver the materials requested by TVA to the site no later than February 25, 2014 (Material Delivery Date). If Distributor fails to provide the necessary materials by the Material Delivery Date, TVA may deem the Underbuilt Circuits cancelled and section 6 below shall apply.

SECTION 3 - PAYMENT FOR TVA'S WORK

Distributor shall provide payment to TVA equal to the total actual cost (TVA Cost) estimated by TVA for the TVA Work (Payment for TVA Work). The TVA Cost for the TVA Work shall include, but are not limited to, planning, scoping, surveying, designing, engineering, labor, travel, contracts, equipment usage, materials, supplies, and construction, plus any additional amounts applicable under section 5 below in the event of cancellation. Distributor shall provide Payment via milestone payments in accordance with the Milestone Payment Schedule set forth in Table 1 below.

Table 1: Milestone Payment Schedule

Payment Due Date	Payment Amount
November 1, 2012	\$ 289,000.00
May 1, 2013	\$ 289,000.00
November 1, 2013	\$ 289,000.00
May 1, 2014	\$ 289,000.00
Total TVA Cost Estimate:	\$1,156,000.00

TVA shall issue invoices for the milestone payments listed in Table 1 and Distributor shall pay such invoices in accordance with the Billing and Payment Terms, attached to and made a part of this agreement. It is expressly recognized and agreed that, notwithstanding anything appearing in the Billing and Payment Terms to the contrary, with respect to such invoices issued by TVA, the "Payment Due Date" shall mean the date set out above. It is further expressly recognized and agreed that nothing in the Billing and Payment Terms shall require TVA to provide detailed documentation of costs incurred in support of any milestone payment invoice.

TVA may make changes to the Milestone Payment Schedule, including, but not limited to, changes to the Total Cost, upon at least thirty (30) days' prior written notice to Distributor to reflect changes in the estimated TVA Cost. During the term of this agreement, payments made by Distributor shall earn simple interest at TVA's average short-term interest rate (which is usually at, or near, zero percent). If Distributor fails to make milestone payments in accordance with the Milestone Payment Schedule by the payment due date, TVA shall be entitled to immediately stop work on the TVA Work.

SECTION 4 - TARGET COMPLETION AND FORCE MAJUERE

The target completion date for the TVA Work is December 5, 2014. The parties shall coordinate any changes in the target completion date with each party's operating

representative. It is expressly recognized that such target completion date is not binding on the parties.

Any delays in or failure of performance by TVA or its contractors shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of TVA or its contractors, and TVA shall not be liable for any loss or damage due to or arising out of any such delays or failure of performance. Such occurrences include, but are not limited to, acts of God or the public enemy, fires, epidemics, quarantines, strikes, freight embargoes or delays in transportation, priorities or other acts or orders of Governmental authority, or unforeseeable severe weather or floods, or any causes, whether or not of the same class or kind of those specifically above named, which are not within the control of TVA or its contractors.

SECTION 5 - CHANGES IN COST AND SCHEDULE

In accordance with section 14 of the Billing and Payment Terms, if at any time TVA becomes aware that the TVA Cost will likely exceed the total TVA Cost estimate by 15 percent or more TVA shall notify Distributor in writing of the increased costs with a revised cost estimate, revised Milestone Payment Schedule, and an explanation for the increased cost estimate. If Distributor and TVA do not reach written agreement on the revised TVA Cost estimate within sixty (60) days of the date of TVA's written notice of such TVA Cost estimate change, the TVA Work shall be deemed cancelled, and section 6 below shall apply.

If, at any time, Distributor becomes aware that the materials for the Underbuilt Circuits will not be provided to TVA by the Material Delivery Date, Distributor shall notify TVA in writing. If Distributor and TVA do not reach written agreement on a revised Material Delivery Date within sixty (60) days of the date of Distributor's written notice, the TVA Work shall be deemed to be cancelled, and section 6 below shall apply.

SECTION 6 - CANCELLATION OF PROJECT

Prior to completion of the TVA Work, if TVA receives a written request from Distributor to stop the TVA Work, or if TVA stops work as provided under section 2 above, the TVA Work shall be deemed cancelled. Upon such cancellation, TVA shall stop work, and all funds received by distributor as Payment for TVA Work will be applied to the TVA Cost.

If the TVA Work is deemed cancelled, in addition to the costs described under section 3 above, Distributor shall be responsible for any costs or losses incurred by TVA to cancel pending orders, return materials and equipment to the vendors, re-configure modified TVA facilities, remove any completed Transmission Line or Underbuilt Circuits work, or to move materials and equipment that are reusable to another location. TVA shall provide Distributor a detailed statement of TVA's costs upon settlement of payment obligations under this agreement. TVA may retain any of the facilities or materials related to the TVA Work that TVA determines to be useful to TVA and shall give Distributor a credit for the costs incurred by TVA in the procurement of the facilities or materials. Distributor shall take possession of any materials or equipment not cancelled, returned, or retained by TVA upon TVA's identification to Distributor within thirty (30) days of written notification of such

materials and equipment. If Distributor fails to take possession of such identified materials and equipment, they shall become property of TVA and shall, at Distributor's expense, be either retained by TVA or disposed.

SECTION 7 - FINAL TVA COST

After completion of the TVA Work, or in the event of cancellation, and final determination of TVA Cost, if the final TVA Cost is in excess of the total Payment for TVA Work received by TVA, TVA shall invoice Distributor, and Distributor shall pay, within thirty (30) days from the date of said invoice (Payment Due Date), any amount of the TVA Cost in excess of the Payment for TVA Work. If Distributor fails to pay the amount due by the Payment Due Date, Distributor shall pay interest on the unpaid amount based on the maximum rate under the United States Prompt Payment Act, (31 U.S.C. §§ 3901-3907) as published in the Federal Register and adjusted periodically (currently semi-annually). Interest shall accrue from the Payment Due Date until the date TVA receives payment.

SECTION 8 - NOTIFICATION

Any written notice required by this agreement shall be deemed properly given if delivered in writing to the address specified below (a) personally, (b) by recognized overnight courier service, or (c) by United States Mail, postage prepaid.

For Distributor	Mr. William C. Pippin, President and CEO
Mail Notices to:	Huntsville Utilities
	Post Office Box 2048
	Huntsville, Alabama 35804-2048

For TVA	
Mail Notices to:	Senior Manager, Power Contracts, WT 3D-K
	Tennessee Valley Authority
	400 West Summit Hill Drive
	Knoxville, Tennessee 37902-1401

The designation of the person to be so notified, or the address of such person, may be changed at any time and from time to time by either party by similar notice.

SECTION 9 - NO ORAL AMENDMENTS

No change, modification, or amendment of this Project Agreement shall be effective or enforceable unless it is in writing and duly executed by all of the parties hereto.

SECTION 10 - PREVIOUS ARRANGEMENTS

It is expressly recognized and agreed that the Preliminary Work Agreement is hereby terminated as of the Effective Date.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives, as of the day and year first above written.

CITY OF HUNTSVILLE, ALABAMA

By _____
Title:

TENNESSEE VALLEY AUTHORITY

By _____
Senior Manager, Power Contracts

BILLING AND PAYMENT TERMS

(Payments to TVA)

(11/16/2009 version)

SECTION 1 - DEFINITION OF TERMS

"TVA" means the Tennessee Valley Authority.

"Reimbursable Contract" means the agreement or contract to which these Billing and Payment Terms are made a part as an attachment or exhibit.

"Billing Party" means the party owed any amount due under the Reimbursable Contract in accordance with these Billing and Payment Terms.

"Billed Party" means the party obligated to pay any amount due under the Reimbursable Contract in accordance with these Billing and Payment Terms. (The same party to the Reimbursable Contract may be the Billing Party or the Billed Party or both.)

"Payment Due Date" means the date by which payment is due the Billing Party as defined in Section 2 below.

"Deliverables" means the work or services performed, or property or equipment furnished, by the Billing Party under the Reimbursable Contract for the ownership benefit of the Billed Party.

SECTION 2 - INVOICING AND PAYMENT DUE DATE

The Billing Party shall submit an invoice to the Billed Party for the amount due. The invoice may be submitted in electronic form, if permitted under the Reimbursable Contract. For accounting reference purposes, the invoice shall be numbered and dated and shall include (a) the contract number assigned under Section 11 (**Assignment of Contract Number**) below and (b) reasonably sufficient detail or supporting documentation to permit the Billed Party to verify the appropriateness or accuracy of the amount owed. Unless a later due date is specified in the Reimbursable Contract, the Payment Due Date shall be 30 days from the date of the invoice.

SECTION 3 - INTEREST ON UNDERPAYMENTS OR OVERPAYMENTS

If the Billed Party fails to pay the amount due by the Payment Due Date, the Billed Party shall pay interest on the unpaid amount based on the maximum rate under the United States Prompt Payment Act, (31 U.S.C. §§ 3901-3907) as published in the Federal Register and adjusted periodically (currently semi-annually). Interest shall accrue from the Payment Due Date until the date the Billing Party receives payment. Failure to pay within 90 days after the Payment Due Date shall constitute a material breach of the Reimbursable Contract. If the Billed Party overpays (such as, due to erroneous or inaccurate invoicing by the Billing Party or due to refund of an excess deposit payment), the Billing Party shall promptly refund the amount overpaid.

SECTION 4 - DELAY OR SUSPENSION OF WORK DUE TO PAYMENT FAILURE

If the Billed Party fails to pay the amount due by the Payment Due Date, the Billing Party shall have the right to delay or suspend the work or services being performed until after such payment failure has been satisfactorily resolved. Nothing herein contained shall be construed as relieving the Billed Party of the obligation to pay the Billing Party for the work completed as of the date such work or services are delayed or suspended.

SECTION 5 - PAYMENT DISPUTE

The Billed Party may dispute the payment of all or a portion of the amount due in an invoice if the Billed Party has a reasonable basis to demonstrate that such amount is inappropriate or questionable. In that case, the Billed Party shall promptly advise the Billing Party in writing of the reasons for disputing all or a portion of the invoiced amount. Upon receipt of the Billed Party's written statement of reasons, the dispute resolution provisions of Section 12 below shall apply. If as a result of the dispute resolution, one party is required to pay the other for the amount overpaid or underpaid, such amount shall include interest calculated in accordance with Section 3 (**Interest on Underpayments or Overpayments**) above.

SECTION 6 - OFFSET

Each party reserves the right to offset any amount owed to the other party against any amount owed by the other party.

SECTION 7 - WARRANTIES AND LIMITATION OF LIABILITY

Unless otherwise provided in the Reimbursable Contract, the Billing Party warrants the Deliverables to be in conformance with generally accepted professional standards prevailing at the time of delivery. Any Deliverables not in accordance with such standards shall be corrected at no cost to the Billed Party as long as such nonconformance is reported in writing within one year from the date of delivery. The Billing Party expressly disclaims any other warranties, including implied warranties of merchantability or fitness for any particular use or purpose, as to any Deliverables provided hereunder.

SECTION 8 - TIME OF COMPLETION AND FORCE MAJEURE

Any delays in or failure of performance by the Billing Party or its contractors shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of Billing Party or its contractors, and Billing Party shall not be liable for any loss or damage due to or arising out of any such delays or failure of performance. Such occurrences include, but are not limited to, acts of God or the public enemy, fires, epidemics, quarantines, strikes, freight embargoes or delays in transportation, priorities or other acts or orders of Governmental authority, or unforeseeable severe weather or floods, or any causes, whether or not of the same class or kind of those specifically above named, which are not within the control of Billing Party or its contractors.

SECTION 9 - ACCESS TO BILLING RECORDS AND CONFIDENTIALITY

Upon written request by the Billed Party, the Billing Party shall provide access during normal working hours to its records as necessary to permit the Billed Party to verify the accuracy or appropriateness of the invoice. The Billed Party shall keep the information examined confidential. If a billing dispute is submitted to dispute resolution as set out in Section 12 below, the Billing Party agrees to provide the pertinent records or information to counsel and independent experts of the Billed Party and those attempting to resolve the dispute, provided such third parties agree to keep such records or information confidential. Nothing in this Section shall be construed as in any way impairing the ability pursuant to statutory authority of the Office of the Inspector General of TVA or of any other Federal agency having auditing jurisdiction over TVA to examine the records of the Billing Party to the extent relating to any amount billed TVA by the Billing Party.

SECTION 10 - ENTIRE CONTRACT

The Reimbursable Contract and all exhibits or attachments thereto (including these Billing and Payment Terms) shall constitute the entire agreement between the parties. In the event of any conflict between the provisions of the Reimbursable Contract and these Billing and Payment Terms, the Reimbursable Contract shall prevail.

SECTION 11 - ASSIGNMENT OF CONTRACT NUMBER

The Reimbursable Contract will have a contract number assigned by TVA for all parties to use as a reference as part of the invoicing and payment processes.

SECTION 12 - DISPUTE RESOLUTION

If a billing amount dispute arises out of or relates to the Reimbursable Contract, including these Billing and Payment Terms, or the breach thereof, the parties agree to use their best efforts to resolve such a dispute informally at the lowest possible levels of decisionmaking. Such a dispute not resolved at the working level should be referred to higher levels of management of both parties for consideration, as necessary. If said dispute cannot be so settled, the parties further agree to develop and use consensual alternative dispute resolution processes, such as facilitation and mediation to try in good faith to settle said dispute, before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may, for example, try to resolve the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules.

SECTION 13 - RESTRICTION OF BENEFITS

No member of or delegate to Congress or Resident Commissioner, or any officer, employee, special Government employee, or agent of TVA shall be admitted to any share or part of the Reimbursable Contract or to any benefit that may arise from it unless the agreement be made with a corporation for its general benefit. The other party to the Reimbursable Contract shall not offer or give, directly or indirectly, to any officer, employee, special Government employee, or agent of TVA any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, except as

provided in 5 C.F.R. part 2635 (as amended, supplemented, or replaced). Breach of this provision shall constitute a material breach of the Reimbursable Contract.

SECTION 14 - CONFORMANCE WITH WORK SCOPE AND COST ESTIMATE

It is recognized that depending on the nature or extent of the work involved, the Reimbursable Contract may include a detailed work scope and a cost estimate (or cost limitation) for work subject to reimbursement based on actual costs incurred. In that case, the Billing Party shall use its best efforts to perform the work within the specified work scope and cost estimate. If at any time the Billing Party becomes aware that the actual costs will likely exceed the cost estimate by 15 percent or more, the Billing Party shall use its best efforts to obtain concurrence or resolution with the Billed Party regarding such cost estimate overrun. This shall include notification of the Billed Party in writing of the cost estimate overrun together with a revised cost estimate and an explanation for the cost estimate overrun so as to provide the Billed Party an opportunity for input and/or consultation. For work or services in excess of the work scope, unless mutually agreed by the parties in advance (such as in the form of an amendment to the Reimbursable Contract), the Billing Party shall not be obligated to perform such work or services, and the Billed Party shall not be obligated to pay for such work or services. The Billing Party may elect to suspend the work in question until it has obtained concurrence or resolution with the Billed Party regarding work in excess of the work scope and/or cost estimate.